

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Appeal Suit No. 292 OF 2018

Between:

Smt N.Balamani, D/o. Late Ashanna

... Appellant/Plaintiff

And

Smt N.Sayamma (died – L.Rs already on record)
and others

... Respondents/defendants

DATE OF JUDGMENT PRONOUNCED: 04.07.2024

Submitted for approval.

THE HON'BLE SMT JUSTICE K.SUJANA

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SUJANA, J

*** THE HON'BLE SMT JUSTICE K. SUJANA**

+ A.S. No. 292 OF 2018

% Dated 04.07.2024

Smt N.Balamani, D/o. Late Ashanna.

... Appellant/Plaintiff

And

\$ Smt N.Sayamma (died – L.Rs already on record)
and others

... Respondents/defendants

! Counsel for the Appellant: Sri Challari Nageswara Rao

^ Counsel for the Respondents: Sri K.Venkatesh Gupta

>HEAD NOTE:

? Cases referred

1. (2020) 9 SCC
2. 2015 Law Suit (SC) 1072

THE HONOURABLE SMT. JUSTICE K.SUJANA

A.S.No.292 OF 2018

JUDGMENT:

The present appeal is directed against the judgment and decree dated 07.01.2017 in O.S.No.2 of 2012, on the file of Principal Senior Civil Judge at Mahabubnagar, whereby the suit of the plaintiff for partition and separate possession in respect of the suit schedule properties was allowed by allotting 1/15th share of the suit schedule properties.

2. The appellant herein is the plaintiff and respondents herein are the defendants. For the sake of convenience, the parties hereinafter are referred to as they were arrayed in the main suit.

3. The brief facts of the case, which necessitated the plaintiff to file the present appeal, are as follows:

The plaintiff filed the main suit for the partition and separate possession and also for allotment of 1/5th share to the plaintiff in respect of the suit schedule properties. It is stated that the plaintiff's father, namely Late Sri Ashanna succeeded the suit schedule properties after the death of her grandfather, who was managing the joint family, in the year 1989. Later, defendant No.1, mother of the plaintiff, passed away. Thereafter, defendant Nos.2 and 3, who are elder brothers of the plaintiff, illegally mutated their names in the

land revenue records without the consent of the plaintiff and her late parents under the guise that the female successors are not entitled for any share. Having knowledge of the same, defendant Nos.6 to 10 purchased a part of the suit schedule properties through registered sale deeds from defendant Nos.2 and 3. Hence, the present suit.

4. Before the trial Court, defendant No.2 filed written statement denying the averments of the plaint and contended that since the suit schedule properties were on the names of defendant Nos.1 and 2 and the plaintiff has no subsisting share, they have executed sale deeds in favour of defendant Nos.6 to 10. On the other hand, defendant Nos.6 to 10 also filed written statement contending that they purchased a part of the suit schedule properties believing that defendant Nos.2 and 3 are the absolute owners and possessors of the suit schedule properties.

5. Based on the above pleadings, the trial Court has framed the following issues:

1. *Whether the suit schedule properties were already partitioned?*
2. *Whether the plaintiff is in the joint possession of the properties as prayed for?*
3. *Whether the court fee paid on the plaint is incorrect?*
4. *Is the suit barred by limitation?*
5. *Whether the plaintiff is entitled to preliminary decree for partition of schedule properties as prayed for? If so, what relief?*

6. The plaintiff, in support of her case, she has examined P.W.1 and got marked Exs.A.1 to A.26. On behalf of the defendants, D.Ws.1 to 4 were examined and Exs.B.1 to B.37 were marked.

7. The trial Court on appreciating the evidence on record, has decreed the suit and allotted 1/15th share to the plaintiff in respect of the suit schedule properties. Aggrieved by the same, the present appeal is filed by the plaintiff

8. Heard Sri Challari Nageswara Rao, learned counsel for the appellant and Sri K.Venkatesh Gupta, learned counsel for respondents. Perused the material available on record.

9. Learned counsel for the appellant submitted that the trial Court ought to have allotted 1/5th share instead of 1/15th share in respect of suit schedule properties as the plaintiff is in joint possession of the suit schedule properties. In this regard, he placed reliance on the judgment of the Apex Court in ***Vineeta Sharma vs. Rakesh Sharma and others***¹ and prayed the Court to allow the appeal by allotting 1/5th share in respect of the suit schedule properties.

¹ (2020) 9 SCC

10. On the other hand, learned counsel for the respondents contended that since there is a prior partition between the legal heirs, the plaintiff being female succeder is not entitled for any share in respect of the suit schedule properties. Hence, he prayed the Court to set aside the order of the trial Court only to the extent of allotting 1/15th share to plaintiff in respect of the suit schedule properties.

11. In the case of **Vineeta Sharma** (Supra 1), the Apex Court held that *if daughter is alive on date of enforcement of Amendment Act, 2005 i.e., 09.09.2005, she becomes a coparcener with effect from the date of the said Amendment Act irrespective of whether she was born before the said amendment.*

12. For better appreciation of the facts of the case, it is relevant to extract Section 6 of the Hindu Succession Act, which reads as follows:

*“6. Devolution of interest in coparcenary property. —
(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—
(a) by birth become a coparcener in her own right in the same manner as the son;
(b) have the same rights in the coparcenary property as she would have had if she had been a son;
(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or*

invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) here a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation. —For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect—

(a) the right of any creditor to proceed against the son,

grandson or great-grandson, as the case may be; or (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation. —For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.”

13. A plain reading of the above provision would abundantly make it clear that a daughter born before or after the amendment confers same coparcener status as son with the same rights and liabilities. Whereas, the trial Court erred in allotting 1/15th share to the plaintiff and notionally partitioned the suit schedule properties, dividing the 1/3rd share each between father of the petitioner i.e., Late Sri Ashanna and defendant Nos.2 and 3. Further, the trial Court allotted 1/15th share to the children of Late Sri Ashanna relying on the judgment of the Apex Court in ***Prakash and others vs. Phulavathi and others***². However, the said judgment was overruled by the Apex Court in ***Vineeta Sharma*** (Supra 1) and observed that if the daughter is alive on 09.09.2005 she becomes coparcener.

14. In the instant case, as Late Sri Ashanna got three daughters including plaintiff and two sons i.e., defendant Nos.2 and 3, without

² 2015 Law Suit (SC) 1072

considering the fact that daughter are also equally entitled for the share as per the Hindu Succession (Amendment) Act, 2005, the trial Court notionally allotted $1/15^{\text{th}}$ share to the plaintiff and $1/3^{\text{rd}} + 1/15^{\text{th}}$ i.e., $6/15^{\text{th}}$ share each to defendant Nos.2 and 3 in respect of the suit schedule properties.

15. Having regard to the rival submissions and material on record, the suit is filed by the plaintiff for the partition of the suit schedule properties and prayed the Court to allot $1/5^{\text{th}}$ share to her. Though the defendants pleaded that there is prior partition in respect of suit schedule properties, the same was not considered by the trial Court. There is no dispute about the nature of property that it is ancestral property, whereas contention of the defendants is that the suit schedule properties were already partitioned and the share of the plaintiff was sold away through defendant Nos.2 and 3. However, there is no such evidence on record to prove the prior partition. The defendants further contended that they gave gold and cash to the sisters at the time of marriage by selling the property for that also there is no evidence on record. Further, it is the contention of the plaintiff that she is equally entitled for share in the suit schedule properties along with defendant Nos.2 to 5 as there is no prior partition. Hence, in view of the facts and circumstances of the case and principle laid down by the Apex Court in ***Vineeta Sharma***

(Supra 1), since the suit schedule properties are ancestral properties and daughters are also equally entitled for share along with the sons as coparceners under Section 6 of the Hindu Succession Act, this Court is inclined to allot 1/5th share to the plaintiff in respect of the suit schedule properties.

16. In the result, the Appeal Suit is allowed by allotting 1/5th share to the plaintiff and defendant Nos.2 to 5 in respect of the suit schedule properties and the judgment and decree dated 07.01.2017 passed in O.S.No.2 of 2012 by the Principal Senior Civil Judge, Mahabubnagar, is modified by allotting 1/5th share to the plaintiff in respect of suit schedule properties.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

04.07.2024
gms

K.SUJANA, J